

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ARYEH MINZER,

Plaintiff,

v.

BP CAFÉ INC., A NEW YORK CORPORATION,
d/b/a URBANA, and 5217 13 LLC,

Defendants.

MEMORANDUM & ORDER
17-CV-3951 (MKB)

MARGO K. BRODIE, United States District Judge:

Plaintiff Aryeh Minzer commenced the above-captioned action on June 30, 2017, against Defendants BP Café Inc., doing business as Urbana, and 5217 13 LLC, asserting claims for violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (the “ADA”), New York State Human Rights Law, N.Y. Exec. Law § 290 *et seq.* (the “NYSHRL”), and New York City Human Rights Law, N.Y.C. Admin. Code § 8-107 *et seq.* (the “NYCHRL”). (Compl., Docket Entry No. 1.) On August 22, 2017, Plaintiff’s counsel filed a motion to withdraw, (Mot. to Withdraw, Docket Entry No. 13), and Magistrate Judge Cheryl L. Pollak scheduled a hearing on the motion for September 27, 2017, directing Plaintiff to appear in person or by telephone. (Order dated Aug. 23, 2017.) As ordered by Judge Pollak, Plaintiff’s counsel made numerous attempts to contact Plaintiff, but was unsuccessful. (*See* Pl. Counsel Letter dated Aug. 24, 2017, Docket Entry No. 17; Pl. Counsel Aff. dated Sept. 18, 2017, Docket Entry No. 18.) On September 27, 2017, Plaintiff’s counsel attended the hearing, but Plaintiff failed to appear. (Min. Entry dated Sept. 28, 2017, Docket Entry No. 19.) Judge Pollak granted the motion to withdraw, and afforded Plaintiff until October 20, 2017 to obtain new counsel or otherwise inform the

Court whether he wishes to pursue his claims. (Order dated Sept. 28, 2017, Docket Entry No. 20.) Judge Pollak warned Plaintiff that “[f]ailure to obtain counsel or contact the Court will result in a recommendation that the case be dismissed for failure to prosecute,” and “[i]f [P]laintiff fails to appear through counsel or fails to contact the Court in writing, the Court will issue a *sua sponte* recommendation that this action be dismissed for [P]laintiff’s failure to prosecute.” (Order dated Sept. 28, 2017 at 3–4.) Plaintiff did not obtain counsel and has not contacted the Court to express intent to pursue his claims.

By report and recommendation dated December 7, 2017 (the “R&R”), Judge Pollak recommended that the Court dismiss the action for failure to prosecute. (R&R 4–5, Docket Entry No. 21.) No party has objected to the R&R.

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s report and recommendation if the party fails to file timely objections designating the particular issue.” (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, the Court adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1). Accordingly, the Court dismisses this action for failure to prosecute. The Clerk of Court is directed to close this case.

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge

Dated: January 19, 2018
Brooklyn, New York